

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EMERGENCY PHYSICIANS OF ST.
CLARE'S, LLC, MERCER BUCKS
ORTHOPEDICS, PC, and PASCACK
EMERGENCY SERVICES,

On behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PROASSURANCE CORPORATION,
PROASSURANCE CASUALTY
COMPANY, and PROASSURANCE
INDEMNITY COMPANY, INC.,

Defendants.

Civil Action No.
09-cv-6244-WJM-MF

[Filed Electronically]

PLAINTIFFS' MEMORANDUM ON JURISDICTIONAL ISSUES

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On Monday, July 26, 2010, the Court requested that Plaintiffs provide an affidavit, declaration, or jurisdictional statement regarding Plaintiff Physicians of St. Clare's LLC ("St. Clare's") citizenship in light of *Zambelli Fireworks Mfg. Inc. v. Wood*, 592 F.3d 412 (3d Cir. 2010).¹ The Court also asked the parties to submit a copy of the full healthcare professional liability policy in question. Accordingly, Plaintiffs submit this Memorandum on Jurisdictional Issues.

In *Zambelli*, the United States Court of Appeals for the Third Circuit held that the citizenship of an LLC is determined by the citizenship of each of its members. *Id.* at 418. As declared by Rohan Somar, M.D., President, CEO and managing director of Plaintiff St. Clare's, on December 9, 2009, the date suit was filed, St. Clare's had eleven (11) shareholders all of whom were citizens of New Jersey.² Therefore, Plaintiff St. Clare is only a citizen of the State of New Jersey for jurisdictional purposes, and is diverse from all Defendants.

Because this is a putative class action, the Class Action Fairness Act ("CAFA"), 28 USCS § 1332(d)(2) is also implicated in jurisdictional issues. CAFA extends federal diversity jurisdiction, with certain exceptions, over class actions with 100 or more class members in which more than \$5 million is in controversy after aggregating class members' claims, and in which any member of the plaintiff class is a citizen of a state different from that of any defendant. 28 USCS § 1332(d)(2), (5)(b), (6).³ Here, the

¹ *Zambelli* was an individual case, not a class action.

² Citizenship is determined at time of filing. See *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 459, n.1 (1980). Plaintiff's Complaint was filed on December 9, 2009.

³ For a more complete discussion of CAFA's jurisdictional requirements see *Adighibe v. Clifton Telecard Alliance*, No. 07-cv-1250, 2008 U.S. Dist. LEXIS 28322 (D.N.J. Apr. 7,

members of Class I and Class II are likely well over 100. Compl. ¶ 20. In the aggregate, the case at bar involves a considerable amount of monetary damages, well over the \$5 million jurisdictional requirement. Additionally, Plaintiffs Mercer Bucks Orthopedics, PC and Pascack Emergency Services are also diverse from Defendants as they are citizens of the State of New Jersey.

Dated: July 30, 2010

Respectfully submitted,

/s/ Eric Poe
Eric Poe, Esq.

2008); *Duruaku v. BB&T Bank*, No. No. 05-5285, 2006 U.S. Dist. LEXIS 44390 (D.N.J. June 29, 2006); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. N.Y. 2006); 5 Jerold S. Solovy, *et al.*, MOORE'S FEDERAL PRACTICE, § 23.63 (3d ed. 2010).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2010, a true and correct copy of **Plaintiffs' Memorandum on Jurisdictional Issues** has been duly served on the following counsel for Defendants, via the electronic filing system.

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